

DISPOSITION: \_\_\_\_\_ AGENDA ITEM #: 12

DEC-18-03 08:18 FROM: MONROE COUNTY CITY OFFICE TO: 3333333333  
**AGREEMENT FOR THE BUILT-OUT HAWK'S CAY DRI**

This Agreement is entered into between the Florida Department of Community Affairs ("the DCA"), the Monroe County, Florida ("the County"), Hawk's Cay Investors, Ltd. and Hawk's Cay Developers, Ltd., Florida Limited Partnerships, (hereafter referred to collectively as "the Owners"), pursuant to Sections 380.032 and 380.06(15)(g), Florida Statutes (2003).

WHEREAS, the County issued a DRI Development Order for the Hawk's Cay Expansion Development of Regional Impact ("the Hawk's Cay DRI") on December 5, 1986, by Resolution 365-1986, which development order was amended numerous times concluding with Monroe County Resolutions No. 037-2002 and 266-2002 (Exhibit "A" hereto) (hereafter referred to collectively as the "Hawk's Cay DRI Development Order"); and

WHEREAS, the Hawk's Cay DRI is essentially built-out and the amount of development remaining does not create the likelihood of any additional regional impact not previously reviewed; and

WHEREAS, the Owners hold legal and equitable title to all lands within the Hawk's Cay DRI on which additional development is authorized pursuant to the Hawk's Cay DRI Development Order; and

WHEREAS, the Owners control the remaining development in the Hawk's Cay DRI and desire to complete the remaining development; and

WHEREAS, the Hawk's Cay DRI development is in compliance with all applicable terms and conditions of the Hawk's Cay DRI Development Order except the build-out date, and the amount of development remaining to be built is less than the substantial deviation thresholds specified in Section 380.06(19), Florida Statutes; and

WHEREAS, the DCA is the State Land Planning Agency of Florida having the power and duty to exercise general supervision of the administration and enforcement of Chapter 380, Florida

Statutes, which includes provisions relating to developments of regional impact; and

WHEREAS, the DCA is authorized by Sections 380.032 and 380.06(15), Florida Statutes, to enter into agreements that establish the terms and conditions for future development of built-out developments of regional impact; and

NOW, THEREFORE,

The DCA, the County, and the Owners agree as follows:

1. The Owners shall be entitled to complete the following development authorized by the Hawk's Cay DRI Development Order:

a. two (2) resort residential units No.'s 1 and 28, moved from Development Corridor 5 to be constructed in the commercial area adjacent to Tom's Harbor, as depicted on the Amended Master Site Plan;

b. 18 affordable hotel staff quarters units, of which units 1-14 are under construction, as depicted on the Amended Master Site Plan.

2. The Hawk's Cay DRI Development Order, as amended, shall be the sole source of terms and conditions under which the development described in paragraph 1 shall be completed. All permits and approvals now in effect issued pursuant to the Hawk's Cay DRI Development Order, are hereby ratified and approved.

3. Biennial Reports pursuant to Section 380.06(18), Florida Statutes, shall not be required after the effective date of this Agreement.

4. In the event of a breach of this Agreement by the Owners, or if the Owners fail to comply with any condition of this Agreement, or if this Agreement is based upon materially inaccurate information, the Department may terminate this Agreement or file suit to enforce this Agreement as provided in Sections 380.06 and 380.11, Florida Statutes. Provided, however, that the Department shall give prior notice to the affected Owner or Owners by certified mail to the addresses

set out below explaining the action that the Department intends to take, and the reasons therefore, and shall allow the Owners a reasonable opportunity to come into compliance before terminating this Agreement, filing suit, or taking any other action that could prevent the Owners from completing the development authorized by the Hawk's Cay DRI Development Order.

**Notice shall be mailed to:**

Don Johnson, President  
Hawk's Cay Investors, Ltd.  
Hawk's Cay Developers, Ltd.  
1827 Quechee Main Street  
Quechee, VT 05059

Pritam Singh  
Villages of Hawk's Cay, Inc.  
800 Duck Key Plaza  
Marathon, Florida 33050

**Copies to:**

Elizabeth C. Bowman, Esquire  
Hopping Green & Sams, P.A.  
P.O. Box 6526  
Tallahassee, Florida 32314-6526

Robert C. Apgar, Esquire  
Sherry A. Spiers, Esquire  
Law Offices of Robert C. Apgar  
320 Johnston Street  
Tallahassee, Florida 32303

5. This Agreement affects the rights and obligations of the parties under Chapter 380, Florida Statutes. It is not intended to determine or influence the authority or decisions of any other state or local government or agency in issuance of any other permits or approvals which might be required by state law or local ordinance for any development authorized by this Agreement. Any amendment to or modification of this Agreement shall not be effective unless contained in a writing signed by the parties.

6. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties hereto. The Owners shall record a notice of this Agreement in the Public Records of Monroe County, Florida, and shall provide the Department and the County with a copy of the recorded notice substantially in the form attached hereto as Exhibit "B", including Book and Page number, within thirty (30) days after the date of execution of this Agreement.

7. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same agreement. Counterparts of this Agreement with facsimile signatures shall be deemed original counterparts for all purposes; however, each party shall promptly furnish counterparts with original signatures upon request. The effective date and date of execution of this Agreement shall be the date that the last party signs and acknowledges this Agreement.

**DEPARTMENT OF COMMUNITY AFFAIRS**

\_\_\_\_\_  
Date

By \_\_\_\_\_  
Title \_\_\_\_\_

**STATE OF FLORIDA**  
**COUNTY OF \_\_\_\_\_**

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by \_\_\_\_\_ (His/Her Name), who is personally known to me or who has produced \_\_\_\_\_ as identification and who did take an oath.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**MONROE COUNTY, FLORIDA**

Date \_\_\_\_\_

By \_\_\_\_\_

**STATE OF FLORIDA  
COUNTY OF MONROE**

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by  
 \_\_\_\_\_ (His/Her Name), who is personally known to me or who has  
 produced \_\_\_\_\_ as identification and who did take an oath.

\_\_\_\_\_  
Notary Public

My Commission Expires:

**HAWK'S CAY INVESTORS, LTD.,**  
**A Florida Limited Partnership,**  
**Hawk's Cay Development, Inc.,**  
**A Florida Corporation, General Partner**

Date \_\_\_\_\_

By \_\_\_\_\_

Donald H. Johnson, President

**STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_**

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by  
 \_\_\_\_\_ (His/Her Name), who is personally known to me or who has  
 produced \_\_\_\_\_ as identification and who did take an oath.

\_\_\_\_\_  
Notary Public

My Commission Expires:

DEC-18-03 08:17 FROM MONROE COUNTY ATTORNEY TO SECRETARY  
PAGE 070

**HAWK'S CAY DEVELOPERS, LTD.,  
A Florida Limited Partnership,  
Hawk's Cay Development, Inc.,  
A Florida Corporation, General Partner**

\_\_\_\_\_  
Date


By \_\_\_\_\_  
Donald H. Johnson, President

**STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_**

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by  
\_\_\_\_\_ (His/Her Name), who is personally known to me or who has  
produced \_\_\_\_\_ as identification and who did take an oath.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

MONROE COUNTY ATTORNEY  
APPROVED AS TO FORM:

  
JOHN R. COLLINS  
COUNTY ATTORNEY  
Date 12/09/03

FILED FOR RECORD

2002 MAR -4 AM 11:26

DANNY L. KOLHAGE  
CLK. CIR. CT.  
MONROE COUNTY, FLA.

RESOLUTION NO. 037 -2002

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY FLORIDA, APPROVING AMENDMENTS TO THE DEVELOPMENT OF REGIONAL IMPACT (DRI) DEVELOPMENT ORDER, RESOLUTION NO. 365-1986, AND MODIFICATIONS TO THE MAJOR DEVELOPMENT APPROVAL FOR THE HAWK'S CAY EXPANSION DRI; PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, on December 5, 1986, after a public hearing, the Monroe County Board of County Commissioners (Board), adopted Resolution No. 365-1986, a Development Order issued under Chapter 380, Florida Statutes (F.S.), for a Development of Regional Impact (DRI) known as the Hawk's Cay Expansion DRI; and

WHEREAS, on September 24, 1986, the Monroe County Zoning Board recommended that the Board approve the amendments to the DRI and Major Development for the Hawk's Cay Resort; and

WHEREAS, on September 18, 1996; February 23, 1998; and December 8, 1999; the Monroe County Board of County Commissioners approved amendments to the DRI and Major Development in Resolution Nos. 335A-1996, 086-1998, 616-1999, and respectively; and

WHEREAS, on October 12, 2001, Hawk's Cay Investors, Limited, and Hawk's Cay Developers, Limited (hereinafter Applicant), proposed a non-substantial change pursuant to Section 380.06(19)(e) 2., F.S. to the 1986 DRI Development Order, as amended, by filing a Notice with Monroe County, the South Florida Regional Planning Council, and the Department of Community Affairs in accordance with Section 380.06(19), F.S.; and

WHEREAS, the Applicant proposes to revise the DRI master plan for the DRI as approved to create Corridor 5 which will include an additional 28 hotel units and 18 new staff units; and

WHEREAS, on October 12, 2001, the Applicant also filed an application for modifications to the 1986 Major Development (hereinafter modifications), as previously amended; and

WHEREAS, during the review process, the Monroe County Planning Commission, after due notice and public participation in the hearing process, reviewed the proposed amendments and modifications to the DRI and Major Development; and

WHEREAS, on February 6, 2002 the Planning Commission recommended approval of the proposed changes and modifications to the DRI and Major Development; and

WHEREAS, the Monroe County Board of County Commissioners (Board) is the local government body having jurisdiction over the review and approval of the DRI, in accordance with Section 380.06, F.S. (2000); and

WHEREAS, the public notice requirements of Monroe County for consideration of the proposed change have been made; and

WHEREAS, the public was afforded an opportunity to participate in the public hearing and all parties were afforded the opportunity to present evidence and argument on all issues; and

WHEREAS, the Board has reviewed the above referenced documents, the related recommendations of the Planning Commission, as well as all related testimony and evidence submitted by the parties and members of the general public;

**NOW, THEREFORE, BE IT RESOLVED BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS, MONROE COUNTY, FLORIDA:**

**Section 1.** The changes proposed by the Applicant in its DRI notification, as modified hereby, do not constitute a substantial deviation pursuant to Section 380.06(19), F.S.

**Section 2.** Resolution No. 365-1986, the 1986 DRI Development Order, as previously amended, for the Hawk's Cay Expansion DRI, shall be further amended as follows:

(New language is underlined; deleted language is ~~stricken through~~)

Amendments to Resolution No. 365-1986, as amended

1. Substitute revised Master Development Plan dated December 14, 2001 attached hereto for the June 12, 2001 revised Master Development Plan, attached to the Development Order as Exhibit One and referenced in Condition 1.12.
2. Revise the third "WHEREAS" clause as follows:

WHEREAS, Hawks Cay Resort when completed will be a hotel type destination resort consisting of ~~447~~ 493 hotel suites, conference facilities, retail areas, restaurants, and recreational facilities on approximately 58.8 acres of land located in unincorporated Monroe County, Florida on Indies Islands at Duck Key; and

3. And three new "WHEREAS" clauses immediately after the third "WHEREAS" clause as follows:

WHEREAS, Monroe County has experienced a severe shortage of affordable housing and the number of affordable housing units that can be built is limited under the Monroe County Year 2010 Comprehensive Plan; and

WHEREAS, the Applicant proposes to build eighteen (18) new staff units for use as affordable housing; and

WHEREAS, the Developer has agreed to cause Duck Key Wastewater Cooperative, Inc., to enter into an agreement providing substantial public benefit by expanding wastewater treatment facilities to communities otherwise not served, including Conch Key, Walker Key, Duck Key and Indies Island; and

4. Revise Condition 1.12 as follows:

The land use approved by this development order shall be on the Master Development Plan attached hereto as Exhibit 1 for the DRI development located at Duck Key. ~~Both of these exhibits are—~~This exhibit is incorporated into this Development Order, provided however, that the Land Use Summary on the Master Development Plan shall control as to the amount and type of approved development at Duck Key.

5. Revise Condition 9.1a. as follows:

The Applicant may construct a maximum of ~~269~~ 297 guest units consisting of combinations of no more than ~~558~~ 642 bedrooms and ~~556.5~~ 654.5 bathrooms at Duck Key. These numbers exclude the 178 hotel units not subject to DRI review. In addition, there are 18 "affordable hotel staff quarters" units added pursuant to the changes proposed on October 12, 2001, which the Applicant may construct a maximum of three dorm-style units with the remaining units built as cottages consisting of no more than 36 bedrooms and 27 bathrooms. For purposes of this development order, those "affordable hotel staff quarters" shall be defined as new rental units that are restricted to (1) a maximum monthly rent of 30 percent of the median adjusted gross annual income for households within Monroe County divided by 12; and (2) units exclusively housing Hawk's Cay resort staff. Prior to the issuance of any certificate of occupancy for any structure containing the staff quarters, a restrictive covenant(s) running in favor of and enforceable by Monroe County shall be filed in the official records of Monroe County. The covenant(s) shall be effective for thirty (30) years but shall not commence running until a certificate of occupancy has been issued by the building official for the staff quarters units to which the covenant or covenants apply.

6. Revise Condition 9.1h as follows:

All new guest units constructed shall adhere to one of the architectural styles and one of the representative floor plans depicted in Attachment G2 to the "Hawk's Cay Expansion Project Community Impact Statement" updated May 20, 1997, or submitted as Supplemental Attachment G2 with the Notification of Proposed Change to a Previously Approved DRI for the Hawk's Cay DRI dated December 1997, or submitted as Second Supplemental Attachment G2 with the Notification of Proposed Change to a Previously Approved DRI for the Hawks Cay DRI dated November 27, 2001.

7. Revise Condition 12 by deleting all existing language, except for the last sentence and replacing it with the following:

Wastewater Treatment Facility. Within ninety days from the effective date of the adoption of this Resolution, the Applicant shall cause Duck Key Wastewater Cooperative, Inc., to enter such agreement(s) with the Board of County Commissioners and/or the Florida Keys Aqueduct Authority ("the Agreement(s)") as may be needed to upgrade the Duck Key Wastewater Treatment Facility and extend Advanced Wastewater Treatment to the communities of Conch Key, Walker Key, Duck Key and Indies Island. Provided, however, this Development Order shall remain in full force and effect if the parties have not entered into such an agreement within ninety days so long as the Applicant is using best efforts to

conclude an above-described agreement as expeditiously as possible. No building permit for the additional hotel units authorized hereby may be issued until the Agreement has been duly executed and either work has commenced thereunder or such performance and payment bonds have been provided as required by the Agreement(s).

8. Add new Special Conditions in Section 13 as follows:

The Applicant and all successors in interest shall hereby relinquish any and all rights to seek vesting or any other means to reclaim units contemplated by the original Development of Regional Impact (DRI). This DRI amendment shall constitute the final and maximum number of units, which may exist pursuant to this DRI.

Section 3. The Major Development modifications, including the revised Master Development Plan dated December 14, 2001, as proposed by the Applicant on October 12, 2001, are also approved.

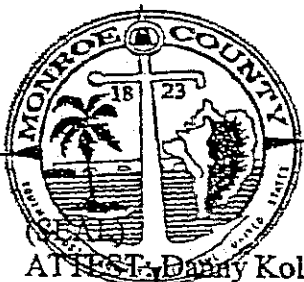
Section 4. Those provisions of the DRI Development Order, Resolution No. 365-1986, as amended, and the Major Development approval, as amended, which are not further amended by this Resolution shall remain in full force and effect.

Section 5. A certified copy of this Resolution, with all exhibits, shall be furnished by the County by certified mail, return receipt requested, to the Applicant, the South Florida Regional Planning Council, and the Florida Department of Community Affairs within 10 days of its adoption by the Board.

Section 6. The Applicant shall record a notice of this Resolution pursuant to Section 380.06(15), F.S. (2000).

Section 7. This Resolution shall take effect upon its adoption.

**PASSED AND ADOPTED** by the Board of County Commissioners of Monroe County, Florida, at a regular meeting held on the 12<sup>th</sup> day of February, 2002.



ATTEST: Danny Kolhage, Clerk

By: Labele C. De Santis

Deputy Clerk

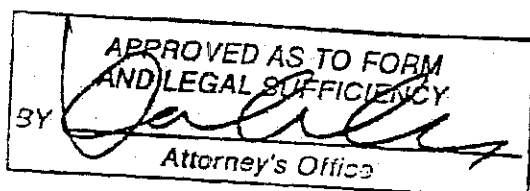
Mayor Charles "Sonny" McCoy  
Mayor Pro Tem Dixie Spehar  
Commissioner Murray Nelson  
Commissioner George Neugent  
Commissioner Nora Williams

yes  
yes  
absent  
yes  
yes

BOARD OF COUNTY COMMISSIONERS OF  
MONROE COUNTY, FLORIDA

By: [Signature]

Mayor/Chairperson



**NOTICE OF ADOPTION OF AN AMENDMENT TO THE DEVELOPMENT ORDER  
FOR THE HAWK'S CAY  
DEVELOPMENT OF REGIONAL IMPACT** <sup>4</sup>

PLEASE TAKE NOTICE that an Amendment to the Development Order for the Hawk's Cay Development of Regional Impact, more particularly described in the legal description in Exhibit A attached hereto, was approved February 23, 1998, by the Monroe County Board of County Commissioners, pursuant to Section 380.06, Florida Statutes. The amendment to the development order may be examined in the office of the Monroe County Planning Department, 2798 Overseas Highway, Suite 400, Marathon, Florida, 33050. The amendment to the development order constitutes a land development regulation applicable to the land described in Exhibit A hereto. This notice does not constitute a lien, cloud or encumbrance on the land or constructive notice of any such lien, cloud or encumbrance.

**HAWK'S CAY DEVELOPERS, LTD.**  
a Florida Limited Partnership

By: Hawk's Cay Development, Inc.  
A Florida Corporation, General Partner

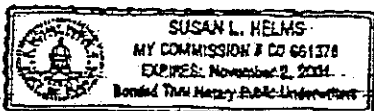
By: [Signature]  
Donald H. Johnson, President  
150 East Sample Road-Suite 200  
Pompano Beach, FL 33064-3592

Witness: [Signature]  
Antonio Rujer

Witness: [Signature]  
SUSAN L. HELMS

STATE OF FLORIDA  
COUNTY OF Broward

The foregoing instrument was acknowledged before me this 26 day of February, 1998, by Donald H. Johnson of Hawk's Cay Developers, Ltd., a Florida limited partnership, on behalf of the partnership. He is personally known to me or has produced \_\_\_\_\_ as identification and did (did not) take an oath.



[Signature]  
Notary Public  
My Commission Expires:

RECEIVED 4-3-98 at Marathon  
SENT TO KEY WEST FOR RECORDING

HAWK'S CAY INVESTORS, LTD.  
a Florida Limited Partnership

By: Hawk's Cay Management, Inc.  
A Florida Corporation, General Partner

By: [Signature]  
Donald H. Johnson, President  
150 East Sample Road Suite 200  
Pompano Beach, FL 33064-3592

Witness: [Signature]  
[Signature]

Witness: [Signature]  
[Signature]

STATE OF FLORIDA  
COUNTY OF Broward

The foregoing instrument was acknowledged before me this 26 day of February, 1998, by Donald H. Johnson of Hawk's Cay Investors, Ltd., a Florida limited partnership, on behalf of the partnership. He is personally known to me or has produced as identification and did (did not) take an oath.



[Signature]  
Notary Public  
My Commission Expires:

FILE #1056731  
BK1508 PG#428

EXHIBIT "A"  
SEE LAND

LAND DESCRIPTIONS:

ANY METES AND BOUNDS DESCRIPTIONS SET FORTH BELOW HAVE BEEN COMPILED BY KEYS TITLE AND ABSTRACT COMPANY ABSTRACT NO. 81234 AND LYING UPLAND OF THE MEAN HIGH WATER LINE, SAID MEAN HIGH WATER LINE HAVING BEEN DETERMINED BY PETSCH & ASSOCIATES, INC. ON MARCH 28, 30, 31, APRIL 28, 29, 30, MAY 2 AND 3, 1988 AND VERIFIED NOVEMBER 4, 7, 8, 28, 29 AND 30, 1988 AND ON SEPTEMBER 1, 2 AND 3, 1982 BY SURVEY PROCEDURES APPROVED NOVEMBER 3, 1988 BY THE BUREAU OF SURVEYING AND MAPPING STATE OF FLORIDA DEPARTMENT OF NATURAL RESOURCES.

LEGAL DESCRIPTION NO. 1 PHASE I DEVELOPMENT (PARTS 1 AND 2)  
(MARINA VILLAS AT HAWK'S CAY)

PART 1

A PARCEL OF LAND SITUATE IN SECTION 27, TOWNSHIP 8S, RANGE 34 EAST, MONROE COUNTY, FLORIDA, BEING A PORTION OF THE PLAT OF "DUCK KEY", SECTION 1, BLOCKS 5, 16 AND 17, AS RECORDED IN PLAT BOOK 3 AT PAGE 82 OF THE PUBLIC RECORDS OF SAID COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF GOLF COURSE DRIVE AND DUCK KEY DRIVE OF SAID PLAT, THENCE BEAR N88°58'00"E ALONG THE CENTERLINE OF SAID GOLF COURSE DRIVE, 231.04 FEET; THENCE N23°04'00"W 20.00 FEET TO THE POINT OF BEGINNING.

FROM THE POINT OF BEGINNING, THENCE N64°16'08"E 777.32 FEET TO THE MEAN HIGH WATER LINE OF TOMS HARBOR, SAID MEAN HIGH WATER LINE HAVING BEEN DETERMINED ON MARCH 28, 30, 31, APRIL 28, 29, 30, MAY 2 AND 3, 1988 AND VERIFIED NOVEMBER 4, 7, 8, 28, 29 AND 30, 1988 BY SURVEY PROCEDURES APPROVED NOVEMBER 3, 1988 BY THE BUREAU OF SURVEYING AND MAPPING STATE OF FLORIDA DEPARTMENT OF NATURAL RESOURCES; THENCE MEANDER ALONG SAID MEAN HIGH WATER LINE ON THE FOLLOWING COURSES, FIRST BEAR N70°44'31"E 3.34 FEET; THENCE N81°48'18"E 25.64 FEET; THENCE S71°58'28"E 31.77 FEET; THENCE N88°48'45"E 33.25 FEET; THENCE S68°41'03"E 30.22 FEET; THENCE S47°03'31"E 26.39 FEET; THENCE S80°07'10"E 26.01 FEET; THENCE S86°28'07"E 26.24 FEET; THENCE S78°17'11"E 26.00 FEET; THENCE N88°44'04"E 26.64 FEET; THENCE S86°48'36"E 26.20 FEET; THENCE S78°58'27"E 12.33 FEET; THENCE DEPARTING FROM SAID MEAN HIGH WATER LINE, S23°04'00"E 162.36 FEET; THENCE S88°58'00"W 326.86 FEET; THENCE S63°43'31"W 26.64 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE NORTH, HAVING A RADIUS OF 138.00 FEET; THENCE WESTERLY ALONG THE ARC OF SAID CURVE, SUBTENDING A CENTRAL ANGLE OF 18°40'54", A DISTANCE OF 48.00 FEET; THENCE S48°43'39"W 58.81 FEET; THENCE S23°02'00"E 85.00 FEET; THENCE S88°58'00"W 418.12 FEET; THENCE S11°43'57"W 70.00 FEET; THENCE N78°18'03"W 83.00 FEET; THENCE S72°48'35"W 217.35 FEET TO A POINT ON A CURVE CONCAVE TO THE WEST, ON THE EASTERLY RIGHT-OF-WAY LINE OF SAID DUCK KEY DRIVE, HAVING A RADIUS OF 1086.18 FEET AND FROM WHICH A RADIAL LINE BEARS S78°14'08"W; THENCE NORTHERLY ALONG THE ARC OF SAID CURVE, SUBTENDING A CENTRAL ANGLE OF 12°18'08", A DISTANCE OF 236.37 FEET; THENCE CONTINUING ALONG SAID EASTERLY RIGHT-OF-WAY LINE, N23°04'00"W 67.64 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 25.00 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, SUBTENDING A CENTRAL ANGLE OF 90°00'00", A DISTANCE OF 38.22 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF SAID GOLF COURSE DRIVE; THENCE N88°58'00"E ALONG SAID SOUTH RIGHT-OF-WAY LINE, 178.64 FEET; THENCE N23°04'00"W 45.00 FEET TO THE POINT OF BEGINNING.

BK 1508 PG 429

LEGAL DESCRIPTION NO. 2 (HOTEL PROPERTY, PARTS 1, 2, 3 AND 4)

PART 1 (MARINA)

A PARCEL OF LAND SITUATE IN SECTIONS 16 AND 21, TOWNSHIP 88 SOUTH, RANGE 34 EAST, MONROE COUNTY, FLORIDA, BEING A PORTION OF LOTS 1 THROUGH 20, BLOCK 2 OF SECTION 1 AND A PORTION OF BLOCK 17 OF SECTION 1 AND 2, ALL ACCORDING TO THE PLAT OF "DUCK KEY", AS RECORDED IN PLAT BOOK 8 AT PAGE 82 OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF LOT 1, BLOCK 2 OF THE AFORESAID PLAT, THENCE N86°56'00"E ALONG THE NORTH LINE OF SAID LOT 1, 28.39 FEET TO THE INTERSECTION OF THE MEAN HIGH WATER LINE OF TOMS HARBOR AND THE NORTH LINE OF SAID LOT 1, SAID MEAN HIGH WATER LINE HAVING BEEN DETERMINED ON MARCH 29, 30, 31, APRIL 24, 27, 28, MAY 2 AND 3, 1988 AND VERIFIED NOVEMBER 8, 7, 8, 28, 29 AND 30, 1988 BY SURVEY PROCEDURES APPROVED NOVEMBER 3, 1988 BY THE BUREAU OF SURVEYING AND MAPPING STATE OF FLORIDA DEPARTMENT OF NATURAL RESOURCES; THENCE MEASURES ALONG SAID MEAN HIGH WATER LINE ON THE FOLLOWING COURSES, FIRST BEAR N83°44'28"E 31.32 FEET; THENCE N83°08'51"E 16.04 FEET; THENCE N83°33'38"E 12.90 FEET; THENCE N37°14'56"E 20.75 FEET; THENCE N63°00'28"E 10.93 FEET; THENCE S88°04'13"E 4.38 FEET; THENCE S36°17'45"W 11.98 FEET; THENCE S28°36'08"W 10.06 FEET; THENCE S31°42'28"W 19.38 FEET; THENCE S46°44'15"W 21.31 FEET; THENCE S29°14'38"W 14.58 FEET; THENCE S24°43'13"E 10.36 FEET; THENCE S11°46'24"E 26.50 FEET; THENCE S09°49'28"W 27.58 FEET; THENCE S60°00'52"E 16.74 FEET; THENCE S89°16'44"E 14.88 FEET; THENCE N78°56'17"E 13.92 FEET; THENCE S64°47'27"E 42.89 FEET; THENCE N65°34'32"E 26.11 FEET; THENCE N76°37'58"E 26.08 FEET; THENCE N72°20'59"E 25.03 FEET; THENCE N87°58'08"E 26.13 FEET; THENCE S89°10'50"E 32.62 FEET; THENCE S38°22'04"E 34.30 FEET; THENCE S14°08'30"E 6.81 FEET; THENCE S27°25'13"E 502.13 FEET; THENCE S34°03'52"E 23.27 FEET; THENCE S22°23'58"E 100.01 FEET; THENCE S01°33'08"E 7.29 FEET; THENCE N88°38'00"E 26.01 FEET; THENCE N89°38'20"E 26.20 FEET; THENCE N88°16'27"E 478.03 FEET; THENCE N85°27'48"E 13.08 FEET; THENCE N81°48'18"E 25.54 FEET; THENCE N83°12'42"E 26.18 FEET; THENCE N87°18'23"E 26.03 FEET; THENCE N70°20'48"E 26.00 FEET; THENCE N71°38'30"E 26.01 FEET; THENCE N70°44'31"E 21.86 FEET; THENCE N88°18'06"E 717.32 FEET TO THE SOUTHERLY EXTENSION OF A LINE 31.48 FEET WEST OF THE EASTERLY PLATTED PROPERTY LINE OF LOT 20, BLOCK 2; THENCE N23°04'00"W ALONG SAID EXTENSION, 108.86 FEET TO THE NORTH LINE OF SAID LOT 20; THENCE S88°56'00"W ALONG SAID NORTH LINE, 191.04 FEET TO THE EAST RIGHT-OF-WAY LINE OF DUCK KEY DRIVE; THENCE N23°04'00"W ALONG SAID EAST-RIGHT-OF-WAY LINE 400.00 FEET TO THE SOUTH LINE OF LOT 8, BLOCK 2; THENCE N88°56'00"E ALONG SAID SOUTH LINE, 111.26 FEET; THENCE N23°04'00"W 120.00 FEET TO THE NORTH LINE OF LOT 7, BLOCK 2; THENCE S88°56'00"W ALONG THE NORTH LINE OF SAID LOT 7, 111.26 FEET TO THE AFORESAID EAST-RIGHT-OF-WAY LINE OF DUCK KEY DRIVE; THENCE N23°04'00"W ALONG SAID RIGHT-OF-WAY LINE, 240.00 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH:

ALL THOSE PORTIONS OF SUBMERGED PLATTED LANDS BEING SEAWARD OF THE MEAN HIGH WATER LINE AS SURVEYED IN SEPTEMBER OF 1982 AND LYING WITHIN LOTS 1 THROUGH 8 INCLUSIVE, BLOCK 2, OF INDIES ISLAND, DUCK KEY, SECTION 1, PART 1, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 8, PAGE 82, OF THE PUBLIC RECORDS OF MONROE COUNTY, FLORIDA.

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TOGETHER WITH:

PART 2 (HOTEL)

A PARCEL OF LAND SITUATE IN SECTION 21, TOWNSHIP 35 SOUTH, RANGE 24 EAST, MONROE COUNTY, FLORIDA, BEING A PORTION OF BLOCK 16, SECTION 1 AND A PORTION OF BLOCK 17 SECTION 2, OF THE PLAT OF "DUCK KEY", AS RECORDED IN PLAT BOOK E AT PAGE 82 OF THE PUBLIC RECORDS OF SAID COUNTY, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE CENTERLINE OF GOLF COURSE DRIVE AND DUCK KEY DRIVE OF SAID PLAT, THENCE BEAR S23°04'00"E ALONG THE CENTERLINE OF DUCK KEY DRIVE, A DISTANCE OF 107.84 FEET; THENCE N66°58'00"E 27.50 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF SAID DUCK KEY DRIVE, SAID POINT BEING THE BEGINNING OF A CURVE CONCAVE TO THE WEST AND HAVING A RADIUS OF 1088.18 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE, SUBTENDING A CENTRAL ANGLE OF 12°18'08", A DISTANCE OF 236.37 FEET; THENCE N72°43'36"E 217.38 FEET; THENCE S78°16'03"E 32.00 FEET; THENCE N11°43'57"E 70.00 FEET; THENCE N68°58'00"E 416.12 FEET; THENCE N23°04'00"W 66.00 FEET; THENCE N48°43'38"E 58.81 FEET TO A POINT ON THE EASTERLY LINE OF AFORESAID BLOCK 16, SECTION 1 AND THE POINT OF BEGINNING.

THENCE FROM THE POINT OF BEGINNING, ALSO BEING A POINT ON A CURVE CONCAVE TO THE NORTH, HAVING A RADIUS OF 138.00 FEET AND FROM WHICH A RADIAL LINE BEARS N17°35'34"W; THENCE EASTERLY ALONG THE ARC OF SAID CURVE, SUBTENDING A CENTRAL ANGLE OF 18°40'54", A DISTANCE OF 48.00 FEET; THENCE N52°43'31"E 26.94 FEET; THENCE N66°58'00"E 326.86 FEET; THENCE N23°04'00"W 162.36 FEET TO THE MEAN HIGH WATER LINE OF TOM'S HARBOR, SAID MEAN HIGH WATER LINE HAVING BEEN DETERMINED ON MARCH 22, 30, 31, APRIL 28, 27, 28, MAY 2 AND 3, 1988 AND VERIFIED NOVEMBER 8, 7, 8, 25, 29 AND 30, 1988 BY SURVEY PROCEDURES APPROVED NOVEMBER 3, 1988 BY THE BUREAU OF SURVEYING AND MAPPING STATE OF FLORIDA DEPARTMENT OF NATURAL RESOURCES; THENCE MEANDER ALONG SAID MEAN HIGH WATER LINE ON THE FOLLOWING COURSES, FIRST BEAR S78°58'27"E 12.47 FEET; THENCE S71°40'23"E 26.18 FEET; THENCE S72°21'06"E 26.18 FEET; THENCE S84°27'11"E 26.13 FEET; THENCE S40°42'22"E 26.02 FEET; THENCE S48°36'20"E 27.06 FEET; THENCE S82°30'53"E 28.86 FEET; THENCE S57°41'03"E 26.64 FEET; THENCE S48°13'12"E 44.07 FEET; THENCE S50°09'22"E 23.68 FEET; THENCE S38°29'13"E 20.67 FEET; THENCE S66°06'00"E 19.20 FEET; THENCE S71°31'48"E 24.38 FEET; THENCE S87°28'24"E 12.17 FEET; THENCE N76°02'58"E 13.80 FEET; THENCE N41°55'13"E 48.81 FEET; THENCE N26°51'18"E 22.19 FEET; THENCE N61°54'24"E 26.13 FEET; THENCE N61°47'33"E 18.80 FEET; THENCE N71°38'06"E 13.83 FEET; THENCE N86°38'02"E 22.34 FEET; THENCE S86°34'52"E 20.29 FEET; THENCE S11°08'40"E 28.74 FEET; THENCE S89°48'01"E 21.71 FEET; THENCE S84°08'53"E 11.44 FEET; THENCE S65°28'28"E 8.70 FEET; THENCE N88°57'18"E 13.86 FEET; THENCE S84°41'26"E 8.21 FEET; THENCE S30°37'33"E 21.48 FEET; THENCE S57°46'22"E 23.37 FEET; THENCE S64°11'42"E 10.18 FEET; THENCE S46°53'18"E 10.73 FEET; THENCE S74°61'56"E 26.86 FEET; THENCE S14°18'34"E 46.92 FEET; THENCE S28°56'47"W 11.77 FEET; THENCE S66°03'13"W 8.16 FEET; THENCE S04°02'06"W 6.30 FEET; THENCE N83°32'21"W 14.82 FEET; THENCE N42°56'55"W 7.88 FEET; THENCE N07°32'37"E 30.07 FEET; THENCE N18°03'20"W 12.16 FEET; THENCE N37°05'45"W 8.56 FEET; THENCE N67°04'53"W 11.88 FEET; THENCE S86°53'03"W 8.32 FEET; THENCE N64°32'04"W 8.14 FEET; THENCE N18°12'14"W 9.83 FEET; THENCE N38°32'24"W 13.83 FEET; THENCE N60°06'42"W 13.04 FEET; THENCE S87°22'59"W 18.24 FEET; THENCE N74°18'14"W 8.23 FEET; THENCE N61°13'01"W 7.93 FEET; THENCE N38°36'53"W 18.88 FEET; THENCE N04°52'08"W 16.01 FEET; THENCE N89°01'23"W 28.35 FEET; THENCE N62°23'18"W 18.06 FEET; THENCE N77°50'56"W 11.86 FEET; THENCE S74°31'31"W 10.42 FEET; THENCE S65°47'17"W 17.98 FEET; THENCE S36°30'32"W 16.18 FEET; THENCE S18°51'46"W 10.51 FEET; THENCE S47°48'28"W 11.68 FEET; THENCE S36°40'21"W 18.89 FEET; THENCE S21°13'40"W 30.90 FEET; THENCE S02°32'49"E 23.82 FEET; THENCE S31°53'58"E 28.43 FEET; THENCE S46°48'47"E 30.03 FEET; THENCE S58°28'31"E 33.40 FEET; THENCE S35°27'58"E 14.90 FEET; THENCE S03°16'11"E 15.81 FEET; THENCE S27°50'44"E 12.83 FEET; THENCE S33°00'08"E 22.41 FEET; THENCE S88°31'48"E 28.70 FEET; THENCE N88°18'41"E 18.34 FEET; THENCE N47°38'54"E 18.92 FEET; THENCE S78°47'28"E 18.66 FEET; THENCE S23°48'56"E 12.90 FEET; THENCE S24°41'46"W 18.18 FEET; THENCE S16°52'28"E 18.07 FEET; THENCE S40°12'06"E 26.26 FEET; THENCE S40°14'18"E 26.16 FEET; THENCE S63°57'03"E 53.24 FEET; THENCE S40°41'28"E 50.36 FEET; THENCE S28°36'31"E 28.11 FEET; THENCE S33°37'08"E 26.00 FEET; THENCE S21°38'36"E 26.58 FEET; THENCE S02°11'18"E 35.72 FEET; THENCE S45°23'11"W 16.02 FEET; THENCE S68°58'58"W 26.33 FEET; THENCE S65°16'37"W 26.58 FEET; THENCE S71°13'23"W 26.03 FEET; THENCE S82°26'20"W 50.26 FEET; THENCE S70°58'40"W 26.03 FEET; THENCE S77°06'47"W 26.30 FEET; THENCE S83°33'31"W 50.17 FEET; THENCE S48°24'43"W 26.04 FEET; THENCE S68°27'03"W 48.44 FEET; THENCE S70°10'47"W 50.00 FEET; THENCE S43°48'01"W 50.40 FEET; THENCE S74°24'58"W 26.04 FEET; THENCE S44°08'20"W 26.18 FEET; THENCE S72°21'24"W 25.01 FEET; THENCE S58°16'48"W 40.82 FEET; THENCE S60°51'02"W 52.68 FEET; THENCE S88°25'58"W 207.03 FEET TO A POINT AT THE

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RESOLUTION NO. 266 -2002

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF MONROE COUNTY, FLORIDA, APPROVING AMENDMENTS TO THE DEVELOPMENT OF REGIONAL IMPACT (DRI) DEVELOPMENT ORDER, RESOLUTION NO. 365-1986, AND MODIFICATIONS TO THE MAJOR DEVELOPMENT APPROVAL FOR THE HAWK'S CAY EXPANSION DRI; PROVIDING FOR AN EFFECTIVE DATE

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**WHEREAS**, on December 5, 1986, after a public hearing, the Monroe County Board of County Commissioners (Board), adopted Resolution No. 365-1986, a Development Order issued under Chapter 380, Florida Statutes (F.S.), for a Development of Regional Impact (DRI) known as the Hawk's Cay Expansion DRI; and

**WHEREAS**, on September 24, 1986, the Monroe County Zoning Board recommended that the Board approve the amendments to the DRI and Major Development for the Hawk's Cay Resort; and

**WHEREAS**, on September 18, 1996; February 23, 1998; December 8, 1999; September 19, 2001; and February 12, 2002, the Monroe County Board of County Commissioners approved amendments to the DRI and Major Development in Resolution Nos. 335A-1996, 086-1998, 616-1999, and 354-2001, and 037-2002, respectively; and

**WHEREAS**, on May 2, 2002, Hawk's Cay Investors, Limited, and Hawk's Cay Developers, Limited (hereinafter Applicant), proposed a non-substantial change pursuant to Section 380.06(19)(e) 2., F.S. to the 1986 DRI Development Order, as amended, by filing a Notice with Monroe County, the South Florida Regional Planning Council, and the Department of Community Affairs in accordance with Section 380.06(19), F.S.; and

**WHEREAS**, the Applicant proposes to revise the DRI Development Order to implement a settlement agreement in an appeal of Monroe County Resolution 037-2002 taken by the Florida Department of Community Affairs by imposing new conditions on the development of 46 additional units authorized in that Resolution; and

**WHEREAS**, the Monroe County Board of County Commissioners (Board) is the local government body having jurisdiction over the review and approval of the DRI, in accordance with Section 380.06, F.S. (2001); and

**WHEREAS**, the public notice requirements of Monroe County for consideration of the proposed change have been made; and

**WHEREAS**, the public was afforded an opportunity to participate in the public hearing and all parties were afforded the opportunity to present evidence and argument on all issues: and

**WHEREAS**, the Board has reviewed the above referenced documents, as well as all related testimony and evidence submitted by the parties and members of the general public;

**NOW, THEREFORE, BE IT RESOLVED BY THE MONROE COUNTY BOARD OF COUNTY COMMISSIONERS, MONROE COUNTY, FLORIDA:**

**Section 1.** The changes proposed by the Applicant in the DRI Notice dated May 2, 2002, do not constitute a substantial deviation pursuant to Section 380.06(19), F.S.

**Section 2.** Resolution No. 365-1986, the 1986 DRI Development Order, as previously amended, for the Hawk's Cay Expansion DRI, shall be further amended as follows:

1. Further Revise Condition 9.1a. as follows:

The Applicant may construct a maximum of 297 guest units consisting of combinations of no more than 614 bedrooms and 626.5 bathrooms at Duck Key. The Applicant agrees that the 28 additional market rate units approved in Resolutions 037-2002 adopted February 12, 2002 shall each contain two (2) bedrooms and two and a half (2 ½) bathrooms. The 18 affordable hotel staff quarters shall consist of 12 units each with 2 bedrooms and 1 ½ baths; 3 units each with 2 bedrooms and 2 baths; and 3 units each with 2 bedrooms and 1 bath. The Applicant further agrees that the 28 additional market rate units and the 18 affordable hotel staff quarters described below shall be subject to the provisions of the Monroe County Comprehensive Plan that limit the number of permits for new residential development in order to maintain hurricane evacuation clearance times established in the Plan. Therefore, Monroe County shall issue building permits for the 28 market rate units and for the 18 affordable hotel staff units only at such time as the Applicant receives a Rate of Growth Ordinance (ROGO) allocation under the permit allocation system or the Applicant acquires and extinguishes an equivalent number of bedroom/bath combinations from a site or sites within the Middle Keys subarea, as defined in Monroe County Code Section 9.5-120.2b, or from within another subarea if the Monroe County Comprehensive Plan and/or Monroe County Code is amended to provide authorization. If the site of the acquired units is within a separate municipality, that municipal government must, by resolution, approve the extinguishments and acknowledge that any new units on the site of the acquired units must receive a ROGO award.

2. Further Revise Condition 9.1h as follows:

The Second Supplemental Attachment G2 is modified to conform to the reduction of bedrooms and bathrooms specified in condition 9.1a.

**Section 2.** Those provisions of the DRI Development Order, Resolution No. 365-1986, as amended, and the Major Development approval, as amended, which are not further amended by this Resolution shall remain in full force and effect.

**Section 3.** A certified copy of this Resolution, with all exhibits, shall be furnished by the County by certified mail, return receipt requested, to the Applicant, the South Florida Regional Planning Council, and the Florida Department of Community Affairs within 10 days of its adoption by the Board.

**Section 4.** The Applicant shall record a notice of this Resolution pursuant to Section 380.06(15), F.S. (2000).

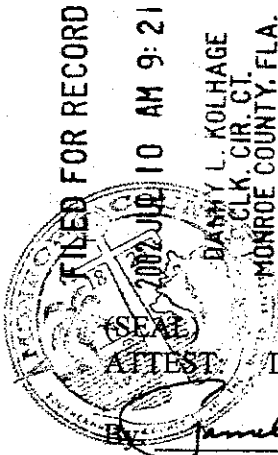
**Section 5.** This Resolution shall take effect upon its adoption.

**PASSED AND ADOPTED** by the Board of County Commissioners of Monroe County, Florida, at a regular meeting held on the 19<sup>th</sup> day of June 2002.

Mayor Charles "Sonny" McCoy	<u>yes</u>
Mayor Pro Tem Dixie Spehar	<u>no</u>
Commissioner Murray Nelson	<u>yes</u>
Commissioner George Neugent	<u>yes</u>
Commissioner Bert Jimenez	<u>yes</u>

BOARD OF COUNTY COMMISSIONERS OF  
MONROE COUNTY, FLORIDA

By: [Signature]  
Mayor Charles "Sonny" McCoy



ATTEST: Danny Kolhage, Clerk  
By: [Signature]  
Deputy Clerk

APPROVED AS TO FORM  
AND LEGAL SUFFICIENCY  
BY: [Signature]  
ROBERT N. WOLFE  
DATE 7-2-02

NOTICE OF ADOPTION OF A CHAPTER 380 BUILT-OUT  
AGREEMENT FOR THE DEVELOPMENT OF REGIONAL IMPACT  
DEVELOPMENT ORDER FOR HAWK'S CAY

Notice is hereby given that on December \_\_\_\_\_, 2003, the Board of County Commissioners of Monroe County and the Florida Department of Community Affairs executed a Chapter 380 Built-Out Agreement for the Hawk's Cay Expansion Development of Regional Impact. The original Development Order was adopted by Resolution No. 365-1986 on December 5, 1986. Modifications or amendments to the originally approved DRI were adopted through Resolution Nos. 335A-1996 On September 18, 1996, 086-1998 on February 23, 1998, 616-1999 on December 8, 1999, 354-2001 on September 19, 2001, 037-2002 adopted February 12, 2002, and 266-2002 on June 19, 2002. A legal description of the property that is subject to the Development Order is attached hereto as Exhibit "A." Said Development Order is on file with, and may be examined at, the Monroe County Growth Management Division, 2798 Overseas Highway, Suite 400, Marathon, Florida 33050-2227. Said Development Order constitutes a land development regulation applicable to the property. Pursuant to Section 380.06(15)(f), Florida Statutes (1999), the recording of this notice shall not constitute a lien, cloud, or encumbrance on real property, or actual or constructive notice of any such lien, cloud, or encumbrance.

**HAWK'S CAY INVESTORS, LTD.,**  
**A Florida Limited Partnership,**  
**Hawk's Cay Development, Inc.,**  
**A Florida Corporation, General Partner**

\_\_\_\_\_  
Date

By \_\_\_\_\_  
Donald H. Johnson, President

**STATE OF FLORIDA**  
**COUNTY OF \_\_\_\_\_**

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by \_\_\_\_\_ (His/Her Name), who is personally known to me or who has produced \_\_\_\_\_ as identification and who did take an oath.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**HAWK'S CAY DEVELOPERS, LTD.,  
A Florida Limited Partnership,  
Hawk's Cay Development, Inc.,  
A Florida Corporation, General Partner**

\_\_\_\_\_  
Date

By \_\_\_\_\_  
Donald H. Johnson, President

**STATE OF FLORIDA  
COUNTY OF**

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by \_\_\_\_\_  
\_\_\_\_\_, (His/Her Name), who is personally known to me or who has produced  
\_\_\_\_\_ as identification and who did take an oath.

\_\_\_\_\_  
Notary Public  
My Commission Expires: